

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Sudeen G. Kelly.

Llano Estacado Wind, LP

Docket Nos. ER02-73-006  
ER02-73-008  
ER06-538-000  
ER06-538-001  
ER06-538-002

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS  
AND TARIFF REVISIONS

(Issued June 22, 2006)

1. In this order, we accept an updated market power analysis filed by Llano Estacado Wind L.P. (Llano Wind) and find that Llano Wind satisfies the Commission's standards for market-based rate authority. We also accept Llano Wind's proposed market-based rate tariff revisions, including a provision that the market-based rate tariff is applicable to sales of electric energy and capacity outside of Entergy Services, Inc.'s (Entergy) control area, a prohibition on affiliate sales, and a market-based rate code of conduct that governs Llano Wind's relationship with its affiliate, Entergy Corporation.<sup>1</sup>
2. Llano Wind's next updated market power analysis is due three years from the date of this order.

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<sup>1</sup> Llano Estacado Wind, LP's, FERC Electric Tariff, First Revised Volume No. 1 Second Substitute Original Sheet No. 1 and Original Sheet No. 4 (Supersedes Original Volume No. 1).

Entergy Corporation is a registered public utility holding company that owns all of the common stock of public utility companies collectively known as its Operating Companies, and Entergy Services, Inc., a subsidiary of Entergy Corporation that acts as agent for the corporation and for the Operating Companies. The Operating Companies are: Entergy Arkansas, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Gulf States, Inc.

### **Background**

3. Llano Wind, an indirect, wholly-owned subsidiary of Entergy Corporation and Shell WindEnergy, Inc. (Shell WindEnergy), owns and operates an 80 MW wind-powered generating facility located in Carson County, Texas. Llano Wind states that its facility is interconnected with the transmission system of Southwestern Public Service Company (SPS) and that it sells all of the generation from the facility under long-term contract to SPS in the SPS control area.<sup>2</sup> Llano Wind states that through its affiliations with Entergy Corporation and Shell WindEnergy, Llano Wind is affiliated with a number of traditional utilities that serve wholesale and retail power customers, and transmission customers. Llano Wind is also affiliated with non-traditional energy companies engaged in the ownership and operation of generating facilities, and in power marketing and trading. However, Llano Wind states that none of its affiliates serve customers or own, operate, or control generating facilities located in the SPS control area.

4. On December 14, 2005, Llano Wind filed a proposed revision to its market-based rate tariff prohibiting sales at market-based rates with points of delivery in Entergy's control area, and requested an effective date of July 22, 2005.<sup>3</sup> On the same date, Llano Wind filed the change in status reporting requirement that the Commission adopted in Order No. 652.<sup>4</sup> On January 11, 2006, as amended on March 1, 2006, Llano Wind filed amendments to its market-based rate tariff to incorporate a prohibition on affiliate sales and a code of conduct.<sup>5</sup> On February 28, 2006, Llano Wind filed an updated market power analysis. On April 25, 2006, Llano Wind revised its tariff to provide that the tariff

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<sup>2</sup> The Commission accepted Llano Wind's initial petition for market-based authority in an unpublished letter order dated December 28, 2001 in Docket No. ER02-73-000.

<sup>3</sup> Entergy, on behalf of Llano Wind, requested that the Commission accept the amendment to Llano Wind's market-based rate tariff to be effective July 22, 2005, the date on which Entergy filed a notice stating that it was withdrawing its request for continued market-based rate authority on behalf of its affiliates for transactions with points of delivery in Entergy's control area and would adopt cost-based rates for such transactions. Entergy December 14, 2005, Transmittal Letter at 2.

<sup>4</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

<sup>5</sup> On March 1, 2006, Llano Wind also amended its filing to delete the market behavior rules from its tariff.

applies only to market-based rate sales of electric energy and capacity outside of Entergy's control area.

### **Notice and Responsive Pleadings**

5. Notice of the December 14, 2005 filing was published in the *Federal Register*, 71 Fed. Reg. 107 (2006), with interventions or protests due on or before January 4, 2006. None was filed.

6. Notices of the January 11, 2006, and March 1, 2006 filings were published in the *Federal Register*, 71 Fed. Reg. 13, 121 (2006), with interventions or protests due on or before February 3, 2006, and March 22, 2006. None was filed.

7. Notice of the February 28, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 13,121 (2006), with interventions or protests due on or before March 21, 2006. None was filed.

8. Notice of the April 25, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 27, 489 (2006), with interventions or protests due on or before May 16, 2006. None was filed.

### **Discussion**

#### **Market-Based Rate Authorization**

9. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>6</sup> As discussed below, the Commission concludes that Llano Wind satisfies the Commission's standards for market-based rate authority.

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<sup>6</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord*, *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

**Generation Market Power**

10. In its order issued in *AEP Power Marketing, Inc.*,<sup>7</sup> the Commission adopted two indicative screens for assessing generation market power. Llano Wind cites section 35.27(a) of the Commission's regulations, which provides that an applicant for market-based rate authority will not be required to demonstrate any lack of market power in generation with respect to sales from capacity for which construction commenced on or after July 9, 1996.<sup>8</sup> However, if an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>9</sup> Llano Wind states that, because construction of its facility began in October of 2001, it is not required to demonstrate a lack of generation market power with respect to sales from its facility. Llano Wind further states that none of its affiliates owns, operates, or controls any generating facilities in the SPS control area. In any event, Llano Wind states that because the entire capacity and energy output of its facility is committed to SPS under long-term contract, Llano Wind does not own, operate or control any uncommitted capacity in the SPS control area. Llano Wind concludes that neither it nor any of its affiliates has generation market power in the SPS control area, the relevant geographic market for consideration of Llano Wind's market power.

11. Based on Llano Wind's representations, we find that Llano Wind satisfies the Commission's generation market power standard for the grant of market-based rate authority.

**Transmission Market Power**

12. Llano Wind states that neither it nor any of its affiliates owns or controls any transmission facilities in the SPS control area, other than limited interconnection facilities necessary to connect Llano Wind's facility to the SPS transmission system. Llano Wind

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<sup>7</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>8</sup> See 18 C.F.R. § 35.27(a) (2005). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

<sup>9</sup> See April 14 Order, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026.

also states that its affiliate, Entergy, owns transmission facilities in another control area and has an open access transmission tariff (OATT) on file with the Commission.<sup>10</sup>

13. Based on Llano Wind's representations, we find that Llano Wind satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

### **Barriers to Entry**

14. Llano Wind notes that, in determining whether an applicant for market-based rate authorization can erect barriers to entry, the Commission considers control over plant sites, the ability to deny interconnection, and control over inputs to generation as potential barriers to entry.<sup>11</sup> Llano Wind also notes that the Commission has previously found that Llano Wind cannot erect barriers to entry in the relevant geographic market.<sup>12</sup> Llano Wind states that to the extent that its affiliates own interests in fuel delivery or supply facilities, as a practical and regulatory matter, such ownership interests will not permit Llano Wind or its affiliates to deny, delay or require unreasonable terms, conditions or rates for fuel procurement to a potential electric competitor of Llano Wind in the SPS control area. Llano Wind further states that if it or an affiliate were to deny, delay or require unreasonable terms, conditions, or rates for fuel or service to a competitor in bulk power markets, competitors harmed by such action may file a complaint with the Commission that could result in the suspension of Llano Wind's market-based rate authority.<sup>13</sup>

15. Based on Llano Wind's representations, we find that Llano Wind cannot erect barriers to entry.<sup>14</sup>

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<sup>10</sup> The Commission accepted Entergy's OATT by Commission order in *Entergy Services, Inc.*, 77 FERC ¶ 61,145 (1996).

<sup>11</sup> Triennial Update at 4.

<sup>12</sup> *Id. citing* unpublished letter order dated December 28, 2001, in Docket No. ER02-73-000.

<sup>13</sup> *Id. citing Credit Suisse First Boston Energy, LLC*, 110 FERC ¶ 61,055 at P 9 (2005); *Jersey Central Power & Light Co.*, 87 FERC ¶ 61,104 at 61,041 (1999); *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

<sup>14</sup> While Llano Wind's representation with regard to barriers to entry is somewhat unclear, we interpret it to mean that neither Llano Wind nor its affiliates own any interests in fuel delivery or supply facilities and so cannot erect barriers to entry in the relevant geographic market. Our authorization is based on this understanding.

### **Affiliate Abuse**

16. Llano Wind states that its market-based rate tariff prohibits the sale of electric energy and capacity to any affiliate with a franchised service territory and includes a code of conduct that governs the relationship between Llano Wind and its affiliates with franchised service territories. As noted above, on January 11, 2006, Llano Wind filed amendments to its market-based rate tariff to prohibit sales between Llano Wind and any affiliate with a franchised service territory without first receiving Commission authorization pursuant to a separate filing under section 205 of the FPA as well as a code of conduct to govern its relationship with Entergy Corporation, an affiliate with a franchised service territory. In this order, the Commission accepts these tariff revisions.

17. Based on Llano Wind's representations, we find that Llano Wind satisfies the Commission's concerns with regard to affiliate abuse.

### **Market-Based Rate Tariff Revisions**

18. In the April 25, 2006 filing, Llano Wind proposed to amend its market-based rate tariff to provide that the tariff applies only to sales of electric energy and capacity outside of the Entergy control area. We will accept this revision to be effective July 22, 2005, as requested. We will also accept Llano Wind's addition of the change in status reporting requirement that the Commission adopted in Order No. 652 and the prohibition on affiliate sales. In addition we find the provisions of Llano Wind's proposed code of conduct to be consistent with the Commission's standard code of conduct and accordingly we accept it.

### **Reporting Requirements**

19. The Commission has stated that it no longer grants waiver of the full requirements of Part 45 in its orders granting market-based rate authority.<sup>15</sup> Rather, the Commission now requires persons seeking to hold interlocking positions to comply with the full requirements of Part 45. An individual who currently is authorized to hold interlocking positions will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions). Consistent with Order No. 664, we require Llano Wind to comply with the full requirements of Part 45.

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<sup>15</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (Sept. 23, 2005), FERC Stats. & Regs. ¶ 31,194, at P 34 (2005), *order denying reh'g and stay*, Order No. 664-A, 114 FERC ¶ 61,142 (2006) (discussing part 45, 18 C.F.R. Pt. 45 (2005)).

20. Llano Wind must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>16</sup> As noted above, Llano Wind has included the change in status reporting requirement in its tariff.

21. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.<sup>17</sup> Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.<sup>18</sup>

22. We will direct Llano Wind to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Llano Wind's updated market power analysis is hereby accepted.

(B) Llano Wind's revisions to its market-based rate tariff sheets permitting sales at market-based rates outside of Entergy's control area are hereby accepted for filing, effective July 22, 2005, as requested, as discussed in the body of this order.

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<sup>16</sup> Order No. 652, 70 Fed. Reg. 8,253.

<sup>17</sup> *Revised Public Utility Filing Requirements, Order No. 2001*, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Report to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>18</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

(C) Llano Wind's revisions to its market-based rate tariff sheets to include a code of conduct and prohibition on sales to affiliates are hereby accepted for filing, effective January 12, 2006.

(D) Llano Wind's addition of the change in status reporting requirement that the Commission adopted in Order No. 652 is hereby accepted for filing, as discussed in the body of this order.

(E) Llano Wind is hereby directed to file an updated market analysis within three years of the date of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.